IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

RFA No. 99 of 2002

Date of Decision : September 5, 2007

Gopal Dass Sharma, …Appellant

Versus:

State of H.P. …Respondent

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting? [1] *No*

For the appellant: Mr. R. K. Bawa, Sr. Advocate with Mr. Inderjit Singh, Advocate.

For the respondent : Mr. Ashok Chaudhary, Addl. Advocate General.

Sanjay Karol, J. (Oral)

The present appeal arises out of the award dated 22.2.2002 passed in Land Reference Case No. 12 of 1996 titled as Gopal Dass v. State of H.P., whereby the compensation payable to the land owners has been enhanced from Rs.16,973/- to Rs.50,000/- per bigha.

For the public purpose, namely, setting up of development of Progeny and Demonstration orchard at Bathara, Tehsil Rampur, petitioner's land measuring 0-19-50 hects. comprising of Khasra No. 1393/903 (old) corresponding to

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

Khasra No. 167 (new), was sought to be acquired by the State in terms of notification issued u/s 4 of the Land Acquisition Act (hereinafter referred to as 'the Act') published on 20.9.1994. The acquisition proceedings were concluded with the passing of the award by the Collector on 10.11.1995, whereby the compensation to be awarded to the petitioner was assessed at Rs.16,973/-.

Aggrieved by the same, the petitioner filed a Land Reference Petition u/s 18 of the Act, inter alia claiming the compensation of Rs.50 lacs alleging that the possession of the petitioner's land was actually taken over in 1964 and the petitioner has been deprived of the user of the land since then.

The reference petition was decided by the District Judge on 22.2.2002, whereby the market value of the land under acquisition was determined @ Rs.50,000/- per bigha.

In support of his claim, the petitioner has examined S/Shri Kewal Ram (PW-1), Gopal Dass (PW-2), Roop Dass (PW-3) and has exhibited copies of the sale deeds Exts.PW-1/A and PW-1/B. Copy of the award Ext.PW-2/A in land reference petition has also been exhibited.

From the statements of the witnesses, it is clearly borne out that the land in question has all the amenities, such as, water, power, telecommunication. The land is fully developed and is fully grown fruit bearing orchard on the same. The acquired land is just abutting the Jeori-Sarahan-State Highway.

The potentiality of growth and the land being put to commercial use is clearly borne out from the material on record and particularly the statements of the witnesses. Ext.PW-1/A is the sale deed dated 6.3.1987 whereby 0-00-77 hects. of land has been sold for a sum of Rs.30,000/-. Ext.PW-1/B is the sale deed dated 3.1.1994 whereby 0-00-60 hects. of land has been sold for a sum of Rs.5500/-. The appellant has placed on record the copy of the award dated 30.9.1999 pertaining to the acquisition of land in revenue estate Kotla, whereby the land compensation has been determined @ Rs.75,000/- per bigha and Shri Gopal Dass (PW-2) has stated that the acquired land is better in fertility, quality, potentiality and productivity as compared with the land covered by the said award. Even though in the year 1964, when the possession of the land was taken, the appellant's land was classified as 'Banjar Kadeem' however, for the purpose of determining the market value, quality of the land as on the date of the notification in the present case is undoubtedly 'Bakhal Awbal'.

Importantly, in the present case, the respondent's own witness i.e. Patwari of the concerned Circle has admitted in his cross-examination that the land under acquisition abuts the Jeori-Sarahan-State Highway and according to the estimate he has prepared the market value of the land under acquisition, at the time of acquisition, was Rs.one lac per bigha. However, the

average market price worked out by him was less than Rs.one lac.

In view of the fact that there is material on record to show that the Horticulture Department had planted apple trees and the land in question is having fully grown fruit bearing apple trees as on the date of notification, the classification of the acquired land is 'Bakhal Awbal' which is the best quality of land. I am of the considered view that the true and correct value assessed by the patwari who is concerned person having experience of more than 14 years, has been rightly assessed at Rs. One lac per bigha. The land in question is having all amenities and great potential of growth and being put to commercial use. No development is required to be carried out on the said land and the vacant land is to be utilized for the public purpose in its entirety. Therefore, no deductions are necessarily required to be made for proper and compete utilization of the land.

Even though, the learned counsel for the appellant has contended that the true and correct market value of the land, based on the material on record would come to Rs. 3 lacs, however, in my view, the market value of the land can be fairly assessed at Rs.one lac based on the material on record as also the case set up by the respondent-State itself.

In this view of the matter, the present appeal is accordingly allowed and the market value of the acquired land is

determined at Rs. One lac per bigha to which the appellant shall be entitled to. The appellant shall also be entitled to all statutory benefits u/s 23(1-A), 23(2), 28 & 34 of the Act on the enhanced amount of compensation. The award is accordingly modified to that extent.

Keeping in view the fact that the possession of the appellant's land was undisputedly taken in the year 1964 and the appellant has been deprived of the rightful user of the same, in the interest of justice as also the facts and circumstances of the present case, it is directed that the respondent shall pay the enhanced compensation, if not already deposited in this Court to the appellant within a period of four months from today.

(Sanjay Karol),
Judge.

September 5, 2007
(*rana*)